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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* ED H. FRANK and RICHARD MARTIN

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Appeal 2009-002522  
Application 10/658,725  
Technology Center 2600

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Decided: October 27, 2009

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Before MAHSHID D. SAADAT, CARLA M. KRIVAK,  
and THOMAS S. HAHN, *Administrative Patent Judges*.

SAADAT, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134(a) from a Final Rejection of claims 1-25, which constitute all the claims pending in the application. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

### STATEMENT OF THE CASE

Appellants' invention relates to a system and method for bandwidth management in a hybrid wired/wireless local area network (Spec. 1, 8, 13). Claim 1, which is illustrative of the invention, reads as follows:

1. A method for providing bandwidth management in a hybrid wired/wireless local area network, the method comprising:
  - receiving from at least one of a first access point and a first switch, at least a first messaging protocol message for establishing a communication session;
  - responsive to said first messaging protocol message, determining an available communication bandwidth for at least a portion of the hybrid wired/wireless local area network;
  - allocating bandwidth to accommodate said communication session; and
  - notifying said first access point of said allocated bandwidth using at least a second messaging protocol message.

The Examiner relies on the following prior art in rejecting the claims:

Sundar	US 2003/0134650 A1	Jul. 17, 2003
Choksi	US 6,978,144 B1	Dec. 20, 2005
		(filed Apr. 19, 2001)

Claims 1-25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Choksi in view of Sundar.

Rather than repeat the arguments here, we make reference to the Briefs and the Answer for the respective positions of Appellants and the Examiner.

## ISSUE

The Examiner reads the claim 1 step of receiving “a first message protocol message for establishing a communication session” on submitting the call admission request of Choksi (Ans. 5, 15-16). The Examiner further reads the claimed step of notifying the first access point of the allocated bandwidth on the handoff process of Sundar (Ans. 5-6, 16). Appellants contend that while Sundar discusses informing a BSC of the desire to handoff, Sundar fails to disclose any access point notification (App. Br. 9; Reply Br. 6). Additionally, Appellants assert that the call admission and bandwidth requests disclosed in column 4, lines 38-40 of Choksi are processed for existing calls and “are not utilized for purposes of ‘establishing a communication session,’ as recited in Appellants’ claim 1.” (Reply Br. 5).

Therefore, the issue specifically turns on whether Appellants have shown that the Examiner erred in rejecting claim 1 by reading the claimed step of receiving “a first message protocol message for establishing a communication session” on the step of submitting the call admission request of Choksi.

## FINDINGS OF FACT

The following findings of fact (FF) are relevant to the issue involved in the appeal.

1. Choksi relates to a method and system for managing real-time bandwidth request in a wireless network. (Abstract; col. 1, ll. 45-48.)

2. As shown in Figures 1 and 2, Choksi describes that a bandwidth allocation controller 70 controls bandwidth request for connections in a cell 34 of the wireless network 12. (Col. 3, ll. 3 – col. 4, ll. 31.)

3. Choksi further discloses that the controller 70 includes a call bandwidth control 72 which receives and processes call admission and additional bandwidth request for existing calls within a cell 34, and a handoff admission control 74 which receives and processes handoff requests for existing connections entering a cell 34. (Col. 4, ll. 32-42.)

### PRINCIPLES OF LAW

Section 103 forbids issuance of a patent when ‘the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.’

*KSR Int'l. Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007).

### ANALYSIS

We disagree with the Examiner’s position that the claim term “a first messaging protocol message for establishing a communication session” reads on the disclosure of Choksi as related to the call admission request. We find that while Choksi discloses managing bandwidth requests in a wireless network (FF 1), the reference does not specify that the call admission requests are received for establishing a communication session. Actually, Choksi describes a bandwidth controller 70 for controlling and processing call admissions and bandwidth requests (FF 2-3). Further, as contended by Appellants (App. Br. 8-9; Reply Br. 5), the bandwidth control

72 and the handoff admission control 74 in the controller 70 receive and process call admissions and handoff requests for *existing* connections (FF 3).

Contrary to the Examiner's interpretation of the reference teachings (Ans. 5, 15-16), the only description of how call admission requests are processed in Choksi is related to the bandwidth allocation controller 70 and its bandwidth and handoff controls 72 and 74 (FF 3). As discussed above, the call admission requests are received and processed only for existing calls within a cell and not for the claimed "establishing a communication session." Therefore, we agree with Appellants that the call admission requests of Choksi are not the same as the "first messaging protocol message for establishing a communication session" recited in independent claims 1, 9, and 17.

### CONCLUSION

On the record before us and in view of the analysis above, we find that Appellants have shown that the Examiner erred in characterizing the claim 1 step of receiving "a first message protocol message for establishing a communication session" as the step of submitting the call admission requests of Choksi. Therefore, since the Examiner has not identified any teachings in Sundar that would have overcome the deficiency discussed above, the 35 U.S.C. § 103 rejection of claims 1-25 over Choksi and Sundar cannot be sustained.

### ORDER

The decision of the Examiner rejecting claims 1-25 is reversed.

Appeal 2009-002522  
Application 10/658,725

REVERSED

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